

COMBINED TRANSMITTAL OF APPEAL BRIEF TO THE BOARD OF PATENT  
APPEALS AND INTERFERENCES & PETITION FOR EXTENSION OF TIME  
UNDER 37 C.F.R. 1.136(a) (Large Entity)

AF/3724/B  
Docket No.  
0166

In Re Application Of: Martin Brady

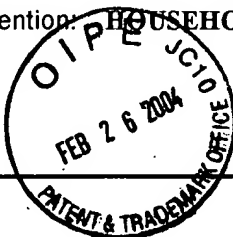
Serial No.  
09/228,109

Filing Date  
Jan. 11, 1999

Examiner  
Allan Shoap

Group Art Unit  
3724

Invention: HOUSEHOLD KITCHEN OPENING APPLIANCE



TO THE COMMISSIONER FOR PATENTS:

RECEIVED  
MAR 03 2004

This is a combined Transmittal of Appeal Brief to the Board of Patent Appeals and Interferences with a petition under the provisions of 37 CFR 1.136(a) to extend the period for filing an Appeal Brief. TECHNOLOGY CENTER MAR 03 2004

Applicant(s) hereby request(s) an extension of time of (check desired time period):

☐ One month ☐ Two months ☒ Three months ☐ Four months ☐ Five months

from: Nov. 22, 2003

Date

until:

Feb. 23, 2004

Date

The fee for the Appeal Brief and Extension of Time has been calculated as shown below:

Fee for Appeal Brief: \$330.00

Fee for Extension of Time: \$950.00

**TOTAL FEE FOR APPEAL BRIEF AND EXTENSION OF TIME: \$1,280.00**

The fee for the Appeal Brief and extension of time is to be paid as follows:

☒ A check in the amount of \$1,280.00 for the Appeal Brief and extension of time is enclosed.

☐ Please charge Deposit Account No. in the amount of

☒ The Director is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. 04-2221

☒ Any additional filing fees required under 37 C.F.R. 1.16.

☐ Any patent application processing fees under 37 CFR 1.17.

☒ If an additional extension of time is required, please consider this a petition therefor and charge any additional fees which may be required to Deposit Account No. 04-2221

03/01/2004 HVUONG1 00000110 09228109

02 F0:1253

950.00 0P

COMBINED TRANSMITTAL OF APPEAL BRIEF TO THE BOARD OF PATENT  
APPEALS AND INTERFERENCES & PETITION FOR EXTENSION OF TIME  
UNDER 37 C.F.R. 1.136(a) (Large Entity)

Docket No.  
0166

In Re Application Of: Martin Brady

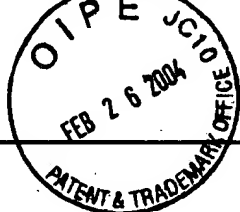
Serial No.  
09/228,109

Filing Date  
Jan. 11, 1999

Examiner  
Allan Shoap

Group Art Unit  
3724

Invention: ~~HOUSEHOLD~~ KITCHEN OPENING APPLIANCE



TO THE COMMISSIONER FOR PATENTS:

This combined Transmittal of Appeal Brief to the Board of Patent Appeals and Interferences and petition for extension of time under 37 CFR 1.136(a) is respectfully submitted by the undersigned:

  
Signature

Dated: February 23, 2004

Roger S. Dybvig  
Registration No. 19,319  
22 Green Street  
Dayton, Ohio 45402  
(937) 461-1142

RECEIVED  
MAR 03 2004  
TECHNOLOGY CENTER R3700

**Certificate of Transmission by Facsimile\***

I certify that this document and authorization to charge deposit account is being facsimile transmitted to the United States Patent and Trademark Office (Fax. No. \_\_\_\_\_) on \_\_\_\_\_

(Date)

Signature

Typed or Printed Name of Person Signing Certificate

**Certificate of Mailing**

I certify that this document and fee is being deposited on Feb. 23, 2004 with the U.S. Postal Service as first class mail under 37 C.F.R. 1.8 and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

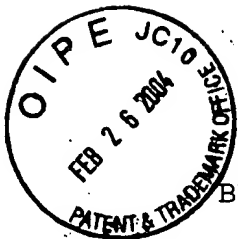
  
Signature of Person Mailing Correspondence

Marilyn Gibas

Typed or Printed Name of Person Mailing Correspondence

\*This certificate may only be used if paying by deposit account.

CC:



PATENT APPLICATION  
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of:  
Martin Brady

Serial No.: 09/228,109

Filed: January 11, 1999

Examiner: Allan M. Shoap

Docket No.: 0166

Art Unit: 3724

For: HOUSEHOLD KITCHEN OPENING APPLIANCE

Commissioner for Patents  
P. O. Box 1450  
Alexandria, Virginia 22313-1450

APPELLANTS' BRIEF

Sir:

Table of Contents

I.	Real Party in Interest	1
II.	Related Appeals and Interferences	1
III.	Status of Claims	1
IV.	Status of Amendments	1
V.	Summary of Invention	2
VI.	Issues	4
VII.	Grouping of Claims	4
VIII.	Argument	4
A.	The Prior Art.	4
B.	Claims 10 through 13 are not unpatentable over the Presto manual in view of Davies and Nielsen et al.	6

#23  
Brief  
B. F. Fyfe  
3/4/04

RECEIVED  
MAR 03 2004  
TECHNOLOGY CENTER R3700

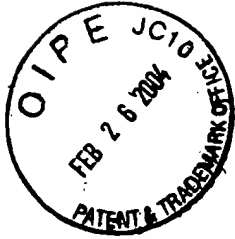
Martin Brady  
Serial No. 09/228,109

IX.	Summary	.	.	.	.	.	.	.	8
	Appendix A - Claims on Appeal	.	.	.	.	.	.	.	A-1

Martin Brady  
Serial No. 09/228,109

Table of Authorities

<u>Ex Parte</u> Martin Brady, Appeal No. 2001-1477 (unpublished) Patent Office Board of Patent Appeals and Interferences, May 20, 2002; on rehearing, August 25, 2002 . . . . .	1
<u>In re Fritch</u> , 972 F.2d 1260, 1266, 23 USPQ 2d 1780, 1784 (Fed. Cir. 1992) . . . . .	7



Martin Brady  
Serial No. 09/228,109

### APPELLANTS' BRIEF

This is an appeal from an examiner's action dated June 18, 2003, finally rejecting claim 3, 7, and 10 through 13 as being unpatentable under 35 U.S.C. 103(a).

#### I. Real Party in Interest

The real party in interest is Hamilton Beach/Proctor-Silex, Inc., which has a principal place of business in Glen Allen, Virginia.

#### II. Related Appeals and Interferences

In an earlier appeal, Ex Parte Martin Brady, Appeal No. 2001-1477, this Board rendered a decision on May 20, 2002, reversing the examiner's action in finally rejecting claims 10-13. A Request for Rehearing was granted August 25, 2002, involving the language of claims 10 and 13. Otherwise, there are no other appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

03/01/2004 HUUONG1 00000110 09228109

01 FC:1402

330.00 OP

#### III. Status of Claims

A total of 15 claims have been submitted. Of these, claims

1, 2 and 6 have been canceled; claims 4, 5, 8, 9, 14 and 15 allowed; and claims 3, 7 and 10 through 13 finally rejected.

#### IV. Status of Amendments

There have been no amendments filed subsequent to the final rejection.

#### V. Summary of Invention

With reference to FIGS. 1 and 2, this invention provides a household kitchen opening appliance 10, shown mounted to the underneath side of a kitchen cabinet 12 by a mounting arrangement 14. (Page 3, lines 21-24) The appliance 10 includes a housing 16 (Page 4, lines 6-8) that comprises a front portion 20 and a rear portion 22 mated together to partially enclose and carry a can opener assembly 18. (Page 4, lines 8-13) Front portion 20 and rear portion 22 of the housing 16 cooperate to define a front wall 23A, a rear wall 23B, two side walls 23C, and a bottom wall 23D. (Page 4, lines 13-15)

Referring to FIGS. 3 and 6, the appliance 10 has a downwardly-open, vertically-extending, scissors-receiving sheath, generally designated 50, for a scissors, such as scissors 52. (Page 5, lines 14-18) The sheath 50 is formed by the rear wall

23B of the housing 16 and a cover member 54 connected to the rear wall 23 by screws 56. (Page 5, lines 18-20) A scissors holder or clamp 58 comprising a pair of cooperating spring metal clamp members 60 and 62, mounted by screws 64 respectively on the housing rear wall 23B and the cover member 54, releasably retain the scissors 52 within the sheath 50 when the scissors 52 are inserted upwardly from below the appliance 10. (Page 5, line 20 to Page 6, line 1.

A jar opener, generally designated 70, mounted on the bottom wall 23D of the housing 16, includes a pair of elongate stainless steel plates 74 and 76 which extend at an acute angle outwardly from the rear to the front of the bottom wall 23D. (Page 6, lines 2-7). The plates 74 and 76 are clamped to respective support pads 78 and 80 formed on the housing bottom wall 23D, by respective clamp plates 82 and 84. (Page 6, lines 7-9) The steel plate 76 has a series of saw teeth 86 along its exposed edge for gripping the edge of a jar lid. (Page 6, lines 9-11) As evident, and as indicated by phantom lines in FIG. 6, a jar (not shown) with a lid 90, may be pressed upwardly against the housing bottom wall 23D and rearwardly into firm engagement with the stainless steel strips 76 and 78 and then rotated to loosen the lid 90. (Page 6, lines 11-15)



#### VI. Issues

The issue before the Board is: whether claims 3, 7 and 10 through 13 of this application are unpatentable under 35 U.S.C. §103(a) because unpatentable over a manual (Presto) titled "PRESTO Under Cabinet Automatic Can Opener Plus" (National Presto Industries, Inc. 1989) in view of United States Patent No. 4,152,831, to Davies and United States Patent No. 5,791,608 to Nielsen et al.

#### VII. Grouping of Claims

For purposes of this appeal, claim 3 stands alone, claim 7 stands alone, and claims 10 through 13 stand or fall together.

#### VIII. Argument

##### A. The Prior Art.

The primary reference is the Presto manual, also identified in the record of this application as "Ref. AU," titled "Under Cabinet Automatic Can Opener Plus." Among other things, the Presto manual describes and shows the operation of a jar opener recessed in the bottom of a can opener housing. See page 8 and

Fig. J of the Presto manual, which shows an electric can opener for domestic use having a jar opener

The secondary references are United States Patent No. 4,152,831, granted to Davies on May 8, 1979, and United States Patent No. 5,791,608, granted to Nielsen et al. on August 11, 1998.

Of the two secondary references, Davies patent 4,152,831, shows tool holders that rely upon a bias produced by springs that force the jaws of a tool open to releasably retain the tool in the tool holder. In an Examiner's Action dated September 27, 2002, and with reference to column 2, lines 26-30 and column 3, lines 30-31 of Davies, the examiner argued that Davies "teaches that a scissors-like tool, which one of ordinary skill in the art can call a scissors, may be attached to any surface where it is convenient via a sheath in which the sheath allows access to the scissors."

Nielsen et al. patent 5,791,608, discloses and claims a paint brush holder made of a flexible sheet material, such as canvas or fabric, which may have a magnet for attracting a metal part on a support for the paint brush. At column 2, lines 19 through 35, Nielsen et al. suggest numerous other uses for their holder. Thus, Nielsen et al. suggest using their holder to hold

large and small parts to the side of solvent tubs while cleaning, to hold hand tools attached to a vehicle's motor compartment, fender or undercarriage, to hold loose items such as nuts and bolts, or to keep "scissors, instruments, bobbins, gauges and other hand tools within reach" while keeping the operator's work space clear by attaching a holder to the front or side of a metal machine (such as a sewing machine). Beginning at column 2, line 30, Nielsen et al. assert that the "device allows mobile repair services to store their most used tools and parts on accessible surfaces, such as pick-up side walls, van side walls and ceilings, metal tool box lids and sides, refrigerators, and washer and dryers without scratching or marring surfaces."

**B. Claims 3, 7 and 10 through 13 are not unpatentable over the Presto manual in view of Davies and Nielsen et al.**

Independent claim 3 recites, inter alia, a household opening appliance including an electric can opener having a housing, a sheath for a scissors on the back of the housing, and a scissors holder within the sheath. Independent claim 4 recites, inter alia, a household opening appliance including an electric can opener having a housing, and a sheath for a scissors on the back of the housing, the sheath being formed from the back wall of the

housing and a cover member connected to the back wall of the housing. Independent claim 10 recites a household opening appliance including an electric can opener having a housing and a scissors holder on said housing capable of releasably retaining a scissors on said housing.

The Davies and the Nielsen et al. devices could be attached to any suitable support. However, the issue in this case should be resolved in appellant's favor by reasoning employed by the Board's in its opinion of May 20, 2002, in Appeal No. 2001-1477. The same Presto reference involved in the instant appeal was the primary reference in the earlier appeal. After noting that a scissors-holding sheath shown in a secondary reference (Hoover et al. 4,984,368) could be attached to any suitable support, the board stated "... the only suggestion for putting the selected pieces from the references together in the manner proposed by the examiner is found in the luxury of hindsight accorded one who first viewed the appellant's disclosure. This, of course, is not a proper basis for a rejection. See In re Fritch, 972 F.2d 1260, 1266, 23 USPQ 2d 1780, 1784 (Fed. Cir. 1992)." (Page 5 of the Board's opinion of May 20, 2002)

Claims 3 and 7 both include a scissors holder within the sheath, a construction not suggested by any of the references,

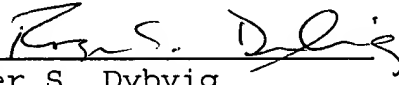
Martin Brady  
Serial No. 09/228,109

and are thereby differentiated from claims 10 through 13. Claim 7 additionally recites that the sheath is formed by the back wall of the housing and a cover member connected to the back wall. Claim 7 is differentiated from claims 3 and 10 through 13 by the recited construction of the sheath, another feature that is not remotely suggested by the art of record.

IX. Summary

For the foregoing reasons, the examiner's action in finally rejecting claims 3, 7 and 10 through 13 should be reversed.

Respectfully submitted,

  
\_\_\_\_\_  
Roger S. Dybvig  
Registration No. 19,319  
22 Green Street  
Dayton, Ohio 45402  
(937) 461-1142

X. Appendix A

Claims on Appeal

3. A household opening appliance comprising an electric can opener having a housing, a jar opener mounted on the bottom wall of said housing, a sheath for a scissors on the back of said housing, and a scissors holder within said sheath.

7. A household opening appliance comprising an electric can opener having a housing, a sheath for a scissors on the back of said housing, and a scissors holder within said sheath.

10. A household opening appliance comprising an electric can opener having a housing and a scissors holder on said housing capable of releasably retaining a scissors on said housing.

11. The appliance of claim 10 further comprising a sheath for a scissors on said housing.

12. The appliance of claim 10 further comprising a jar opener mounted on the bottom wall of said housing.

13. The appliance of claim 12 further comprising a sheath on said housing for a scissors.